

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RIDGEWOOD HEALTH CARE CENTER, INC.  
AND RIDGEWOOD HEALTH SERVICES, INC.  
A SINGLE EMPLOYER

and

Case 10-CA-113669

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION (USW)

and

Case 10-CA-136190

RIDGEWOOD HEALTH SERVICES, INC.

**ORDER**

Charging Party's Motion for Acceptance of Late Filed Answering Brief and Counsel for General Counsel's Motion to Accept Late Filing of Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge are denied. The Board's e-filing terms warn potential filers not to wait until the last minute to file, and that a user's problems with hardware, software, or internet service providers, or problems understanding and following the e-filing instructions, will not excuse an untimely filing.<sup>1</sup> Accordingly, the reasons for the late filings do not rise to the level of excusable neglect.<sup>2</sup>

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<sup>1</sup> The Board's e-filing terms state:

Although the Agency's E-Filing system is designed to receive filings 24 hours per day, parties are strongly encouraged to file documents in advance of the filing deadline and during the normal business hours of the receiving office, in the event problems are encountered and alternate means of filing become necessary.

User Problems. Problems with a user's telephone lines, internet service provider, hardware, or software; user problems in understanding or following the E-Filing instructions; or rejection of a document because it contains a virus do not constitute a technical failure and will not excuse an untimely filing. A filer who cannot E-File a document because of any of these user problems must file conventionally and timely. The Agency's offices have no lobby facilities for filing after the close of business. *Thus, a user who waits until after close of business on the due date to attempt to E-File does so at his/her own peril.* If you are unsure whether the problem is a technical failure or a

Dated, Washington, D.C., October 22, 2015.

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Mark Gaston Pearce, Chairman

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Kent Y. Hirozawa, Member

Member Miscimarra, dissenting.

Unlike my colleagues, I would grant the parties' motions and accept the parties' late submissions for the following reasons. The filing deadline was 11:59 pm on May 22, 2015, and the attorneys representing the Charging Party and the General Counsel electronically filed their answering briefs 5 and 6 minutes late, respectively. Sec. 102.111(c) of the Board's Rules and Regulations states that a party may file a brief within a reasonable time after the applicable deadline based on a showing of "good cause . . . based on excusable neglect and when no undue prejudice would result." Moreover, in other contexts (for example, regarding the filing of an *Excelsior* list identifying eligible voters prior to a representation election), the Board has exhibited some leniency regarding filing deadlines particularly when the delay has not resulted in prejudice to other parties. See, e.g., *Bon Appetit Management Co.*, 334 NLRB 1042 (2001) (*Excelsior* list one day late); *Pole-Lite Industries*, 229 NLRB 196 (1977) (*Excelsior* list three calendar days and one working day late). In this case, both parties' counsel attributed their late submissions to computer-related difficulties (the General Counsel unexpectedly was required several times to attempt the electronic filing of the brief before it was accepted; and the Charging Party's delay resulted from an inability to electronically generate the table of contents, resulting in the need to compile it manually). No party will be prejudiced by the Board's acceptance of these briefs filed minutes after the deadline, particularly since copies of their answering briefs were served on the other parties, and both motions to accept the late-filed briefs are unopposed. In these circumstances, I believe the Board should accept the late-filed briefs based on the existence of excusable neglect.

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Philip A. Miscimarra, Member

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user problem, assume it is a user problem. [Emphasis added].

<sup>2</sup> The *Excelsior* cases cited in the dissent, which consider whether a representation election should be set aside because the employer failed to timely provide a list of eligible voters, are irrelevant because they are governed by a different standard. The inquiry in those cases is not one of excusable neglect, but "whether the delay interfered with the purposes behind the *Excelsior* rule, i.e., to provide employees with the full opportunity to be informed of the arguments concerning representation." *Bon Appetit Management Co.*, 334 NLRB 1042, 1043 (2001).